

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 608 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
 2. To be referred to the Reporter or not? No.
 3. Whether Their Lordships wish to see the fair copy of the judgement? No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? No.

SHAKRABHAI RANCHHORBHAI RAVAR

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 608 of 1992
MR LM CHHABLANI for the appellants.
MR.MA BUKHARI,APP, for the Respondent-State.

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE M.S.PARIKH

Date of decision: 19/01/98

ORAL JUDGEMENT

PER:K.R.VYAS,J

The appellants, who are original accused Nos.1,2 and 3 in Sessions Case No.72/91, have filed this appeal challenging the judgment and order of conviction and sentence dated 1-6-1992 passed by the learned Additional Sessions Judge, Sabarkantha at Himatnagar. By the said judgment and order, appellants Nos.2 and 3 have been convicted for offence punishable under Section 498-A of the Indian Penal Code and each of them has been sentenced to undergo R.I. for one year and to pay a fine of Rs.250/-, in default to undergo a further R.I. for ten days, whereas all the appellants have been convicted for the offence punishable under Section 302 of the Indian Penal Code and each of them has been sentenced to undergo R.I. for life and to pay a fine of Rs.100/-, in default to undergo further R.I. for five days. The learned Additional Sessions Judge has also ordered both the sentences as against appellants Nos.2 and 3 to run concurrently. It may be stated here that original accused No.4 Geetaben, who was also tried along with the present appellants, has been acquitted of the offences charged against her.

Briefly stated, the prosecution case is that the appellants are, respectively, the father, mother-in-law and husband of deceased Jashi. The marriage between the deceased and appellant No.3 took place three years prior to the death of the deceased. It is the prosecution case that the deceased was not happy at her marital house as the appellants used to take from her the household as well as agricultural work and on her refusal to do so, her husband used to beat her. In fact, the deceased, on account of the said harassment by the appellants, also came back to her parental house at village Tajpur and stayed there for about a month. It appears that at the intervention of some caste people and on their giving assurance for the good behaviour on the part of the appellants, Jashi was sent to the appellants. When deceased Jashi again came to her parental house during Holi festival days i.e. on 1-3-1991, she again complained about the harassment by the appellants. She was, however, persuaded to go back to the house of the appellants.

A few days thereafter i.e. on 17-3-1991, appellant No.1 filed a complaint, which was registered by Prantij Police Station at about 15.30 hours stating therein that to-day i.e. on 17th March 1991, when he and his daughter Geeta (original accused No.4) had gone to

the field and were doing agricultural work, at about 10.00 a.m., his another daughter Gobar had come and informed them that his daughter-in-law Jashi has consumed poison and has died. According to him, the incident had taken place at about 9.00 a.m. in the morning and at that time his wife-appellant No.2 and the deceased were there in the house and his son-appellant No.3, had gone to village Sanpad.P.S.I. Parbatsinh Mangalsinh,PW 13, Ex.35, on the basis of the said information, started investigation , prepared inquest panchnama and sent the dead body of deceased Jashi for post mortem examination.

In the meantime, Mangabhai Madhabhai, PW 2, Ex.18, the father of the deceased, who came to know about the sudden death of his daughter, had also gone with his son Baldev, PW 3, Ex.20, and one Karsanbhai Jivabhai, PW 4, Ex.21, to village Tajpur and saw the dead body of the deceased and inquired about the cause of death from the appellants. Mangabhai also filed a complaint on the next day i.e. on 18th March 1991 before the Dy. S.P., who referred the same to Prantij Police Station. P.S.I.,Prantij continued the investigation into the allegations made in the complaint, Ex.19, filed by Mangabhai by recording the statements of the witnesses.

Dr. Bipinchandra Naik, PW 1, Ex.12, Medical Officer of the General Hospital, Himatnagar, who performed the post mortem examination on the dead body of the deceased, has stated about the cause of death that," the cause of death is kept reserved till the chemical analysis report comes from the F.S.L.,Ahmedabad, but the probable cause of the death may be ASPHYXIA DUE TO SUFFOCATION". In view of this opinion, the viscera of the deceased was sent to the Forensic Scientific Laboratory, Ahmedabad, by the Investigating Officer for analysis. As per the report, Ex.39, of the Senior Scientific Assistant, Forensic Scientific Laboratory, the possibility of the deceased having consumed poison is totally ruled out. On receipt of the said report, Dr.Naik of the General Hospital, Himatnagar, also made necessary entry on 1-7-91 in the P.M.report about the cause of the death by stating that finally the cause is Asphyxia due to suffocation. In view of this opinion, further investigation was conducted by adding the charge under Section 302 of the Indian Penal Code against the accused. On completion of the investigation, necessary chargesheet was filed against all the accused before the learned Judicial Magistrate, First Class, Prantij, who, in turn, committed the accused to the Court of Sessions for trial as the offences charged against the accused were exclusively triable by the Court of Sessions.

The learned Additional Sessions Judge, Sabarkantha at Himatnagar, framed the charge, Ex.3, against the accused for the offences punishable under Sections 498A, 302, 109, 114 and 202 of the Indian Penal Code to which the accused pleaded not guilty and claimed to be tried. The learned Additional Sessions Judge, on appreciation of the evidence on record and the statements of the accused recorded under Section 313 of the Code of Criminal Procedure, found appellants Nos.2 and 3 guilty for having committed the offence punishable under Section 498-A of the Indian Penal Code and has also found all the appellants guilty for having committed the offence punishable under Section 302 of the Indian Penal Code and sentenced them as stated in the first paragraph of this judgment.

Mr.L.M.Chhablani, learned Advocate , appearing for the appellants, after having taken us through the evidence of the prosecution witnesses , submitted that this being a case of circumstantial evidence, the prosecution has failed to establish the chain of circumstances against the appellants beyond reasonable doubt. In the submission of Mr. Chhablani, the presence of the appellants has not been established at the time of the incident and, therefore, the appellants are required to be given benefit of doubt. Finally, Mr. Chhablani has submitted that the prosecution has failed to establish the motive on the part of the appellants to commit murder of deceased Jashi and, therefore, the appeal is required to be allowed.

Mr.M.A.Bukhari, learned Additional Public Prosecutor, on the other hand, supported the judgment of the trial Court in toto.

Dr.Bipinchandra Naik, PW 1, Ex.12, the Medical Officer of the General Hospital, Himatnagar, who performed the post mortem examination on the dead body of deceased Jashi, has found the following condition of the dead body of the deceased:

1. Face is severely congested and puffy upto thyroid cartilage level.
2. Several petechial haemorrhage spots over both cheeks.
3. Pupils are dilated, conjunctive congested.

4. Lips are blue.

5. Tongue inside the mouth, white, swollen.

6. Fine bloody breath coming from mouth and both nostrils.

7. Ear: NAD.

Dr. Naik also found that stool was passed out and the petticoat was found stained with stool. Dr.Naik in his report has stated that the cause of death is kept reserved till the Chemical Analyser report comes from the Forensic Scientific Laboratory, but the probable cause of the death may be Asphyxia due to suffocation. The FSL report has totally ruled out the possibility of the deceased having consumed poison. Only conclusion as regards cause of the death of the deceased was Asphyxia due to suffocation , as opined by Dr.Naik and, therefore, the death of the deceased was homicidal death due to suffocation. When the pillow recovered by the Investigating Officer Parbatsinh, PW 13, at the instance of appellant No.2, which was allegedly used for suffocating the deceased, was shown to Dr. Naik, he opined that the death is possible, if article 5 i.e. the pillow is pressed on the nose and the mouth of a person. He has further stated in his cross-examination that it all depends upon the strength of an individual who presses the pillow on the nose and the mouth of that person for stopping the breathing process and that if such a breathing process is stopped for a period of 5 to 7 minutes, the person would die. The doctor has also opined that if accused Nos.2 and 4 (being lady accused) would press the pillow on the mouth and nose of the deceased lady, it is possible that the victim could resist the same and in that event she would sustain the injuries on her face. In view of the evidence of Dr.Naik, we are of the opinion that the death of the deceased was a homicidal death and was caused due to suffocation. In view of the positive opinion of Dr.Naik that it is not possible for the deceased to commit suicide by suffocating herself and in view of the fact that the incident had taken place in the house of the appellants, there are strong circumstances against the appellants for having committed the offence alleged against them.

Mangabhai Madhabhai, PW 2, Ex.18, father of the deceased and Baldev, PW 3, Ex.20, brother of the deceased, in their evidence, have stated that the appellants were harassing deceased Jashi by taunting her and appellant No.3 used to beat her. She was also being

harassed by the accused while taking household as well as agricultural work from her and on her refusal to do the same, appellant No.3 used to beat her and the deceased was always telling this to them whenever she came at Prantij.

Bhalabhai Nathabhai, PW 5, Ex.22, has stated in his evidence that he has married at village Tajpur. He has stated that he knew the appellants very well as the house of appellant No.1 is just adjacent to the house of his father-in-law. He has further stated that on account of sickness of his father-in-law he had gone to village Tajpur when he was informed by deceased Jashi that she is being beaten by her mother-in-law as well as by her husband and the said information may be conveyed to her father. Accordingly, he had conveyed this information to the complainant. In view of this information, complainant Mangabhai and his wife had in fact brought the deceased back with them to their place where she stayed for a month. This evidence of Bhalabhai is duly corroborated by the evidence of Mangabhai as well as Baldev.

Kalubhai Joitabhai, PW 6, Ex.23, who is the father-in-law of Gobar-daughter of appellants Nos.1 and 2, has also confirmed that at his intervention a settlement was arrived at between the deceased and her husband-appellant No.3 and it was decided to send the deceased to her marital house.

In view of the above evidence on record, it is clear that deceased Jashi was not happy at her marital house as she was being constantly harassed and beaten by appellants Nos.2 and 3 during her short marital life of three years. It is further clear that because of the harassment, she had to stay for about a month at her parental house and at the intervention of leading caste people, she again returned to the house of the appellants. In view of the evidence of Kalubhai Joitabhai, PW 6, who is one of the close relatives of the appellants and in whose presence the settlement was arrived at, it is abundantly clear that the deceased had grievances to make against the appellants and had in fact conveyed the same through Bhalabhai, PW 5. It is also clear that even though a general allegation of taunting is made against the appellants, appellants Nos.2 and 3 were in fact mainly responsible for the harassment and beating the deceased. Thus the appellants Nos.2 and 3 had strong motive to get rid of the deceased. In view of this, we are of the view that the learned Additional Sessions Judge was perfectly justified in convicting

appellants Nos.2 and 3 for the offence punishable under Section 498A of the Indian Penal Code.

This takes us to the question whether the appellants have committed the offence punishable under Section 302 of the Indian Penal Code. It appears that the presence and participation of appellant No.1 in suffocating deceased Jashi alongwith the other appellants is doubtful. This is in view of the fact that appellant No.1, who informed the police by filing complaint, Ex.36, on the day in question has come out with a version that he had gone with her daughter Geeta (original accused No.4) to his field in the morning and at about 10 O'clock his elder daughter Gobar had come and informed him that Jashi has consumed poison and has died and so he returned home. This very fact he had disclosed to Mangabhai , PW 2, Baldev, PW 3 and Karsanbhai, PW 4, when they came to village Tajpur to see the deceased. It is true that the information which he passed on of the deceased having consumed poison ultimately proved false, but admittedly he was not the author of the said information inasmuch as he was informed about the same by his own daughter Gobar. Surprisingly, the Investigating Officer, who had recorded the statement of Gobar, has not been examined by the prosecution . In absence thereof, we have to accept the earliest version given by appellant No.1 by way of complaint, Ex.36, wherein he has stated that he was informed about the probable cause of the death of the deceased having consumed poison by his own daughter Gobar. The learned Additional Sessions Judge has, therefore, rightly acquitted appellant No.1 for the offence punishable under Section 202 of the Indian Penal Code. The fact that original accused No.4-Geeta, who was also charged, alongwith appellant No.2, for having suffocated the deceased by pressing pillow on the mouth and nose of the deceased, is acquitted on the ground that her presence at the house was doubtful as according to the complaint, Ex.36, filed by appellant No.1, she was with appellant No.1. The same reason can as well be made applicable to appellant No.1 of not being present at the house when the incident took place. Thus, considering this aspect of the case, we are of the opinion that appellant No.1 is entitled to get benefit of doubt as his presence at the house at the time when the incident took place appears to be extremely doubtful.

Then remains the question whether appellants Nos.2 and 3 can be held responsible for causing murder of Jashi. In view of our finding that the offence punishable under Section 498A of the Indian Penal Code is fully established against them, it can be concluded that

appellants Nos.2 and 3 had strong motive on the part of appellants Nos.2 and 3 to get rid of the deceased. As far as appellant No.2 is concerned, her presence at the house is established in view of the complaint, Ex.36, filed by appellant No.1. Besides, the recovery of the pillow at the instance of appellant No.2 is also established by the evidence of Panch witness Shaileshkumar , PW 10, Ex.32 and the Investigating Officer Parbatsinh Mangalsinh, PW 13, Ex.35. Appellant No.3, in order to show that he was not present when the incident had taken place, has led evidence of defence witness Shakarabhai Ramabhai, DW 1, Ex.42; Sitaben Babubhai, DW 2, Ex.43 and Babubhai Ranchhodbhai,DW 3, Ex.44.The evidence of Shakarabhai Ramabhai is relevant for our purpose as he is the neighbour of the appellants. According to him , he had returned home from service at about 9.00 p.m. and was called by appellant No.1 for the purpose of tea. As his wife had gone to village Sanpad, he wanted to go to the said village for bringing her back. He has stated that appellant No.3 also wanted to accompany him and accordingly both had gone to village Sanpad. When they returned from Sanpad to village Tajpur at about 5.00 or 6.00 p.m.,at the bus-stand they were informed about the death of the wife of appellant No.3. In substance he has tried to show that appellant No.3 was with him for the purpose of bringing his wife back from village Sanpad. It is not possible for us to accept the evidence of this defence witness for the simple reason that no details are forthcoming from his evidence as to when they left village Tajpur for village Sanpad. Reading the evidence of this defence witness, it appears that they must have left on the same night after 9.00 p.m. on 16-3-91. Sanpad being very near to village Tajpur, there was no purpose for them to go on the same night and to stay overnight and then to return only in the evening at about 5 or 6 p.m. on the next day i.e. 17-3-91 when the incident was already over. Assuming that they had gone to village Sanpad in the morning of 17th March 1991, in that event also, appellant No.3 could also have been informed about the untimely death of his wife, especially when the complainant Mangabhai ,who was staying at a distant place, was informed immediately about the death of his daughter. Besides, appellant No.3 has not led any cogent evidence or shown any convincing reason to establish his presence at village Sanpad right from the early hours till the evening hours of 17-3-91. Except the bare words of Shakarabhai and Sitaben, there is nothing on record which would establish the absence of appellant No.3 at the time and place of the incident. On the contrary, evidence of Mangabhai, PW 2, clearly establishes the presence of all the accused when he

states that, "xCZr xJgm xZbm xFakUnB xDkbP xCkbuVmCuUr xVnIQk xCkbuVmCuCr xJPkfrdnB xDr xJgm xSfk xVm xFCl xIr." In view of this evidence on record, and in any case considering the fact that the deceased was having a strong and healthy body, she could not have been overpowered by appellant No.2 only and in that case the possibility of appellant No.3 in the company of appellant No.2 in overpowering the deceased cannot be ruled out. The following are the strongest circumstances which would lead to an inevitable conclusion that appellants Nos.2 and 3 are responsible for causing death of Jashi and thus having committed the offence punishable under Section 302 of the Indian Penal Code:

- 1 That there was harassment and beating by them to
That there was harassment and beating by them to
deceased Jashi on account of which she had to
leave her marital house and, in fact, stayed at her
parental house for about a month.
2. Even thereafter also the harassment and beating
continued and during Holi festival when she had
come to her parental house she declined to go
back to her marital house but for some settlement
arrived at between Jashi and appellant No.3 at
the intervention of some caste people and on the
assurance given by the appellants of their good
behaviour in future she again had gone to the
place of the appellants.
3. The medical evidence has ruled out the cause of
death by consumption of poison and it is
established by the medical evidence that the
cause of the death of deceased Jashi was Asphyxia
due to suffocation. In the process of suffocating
deceased Jashi, she had passed out stool and her
petticoat was found to have stained with stool.
4. Pillow was recovered at the instance of appellant
No.2.
5. The incident had taken place in the house of the
appellants and the presence of appellants Nos.2
and 3 is duly established.
6. The defence put forward by appellant No.3 that he
had gone to village Sanpad and was not present at
the time of incident is falsified by the conduct
on the part of the appellants inasmuch as
Mangabhai, who was residing at village Prantij
was immediately informed about the untimely death

of his daughter whereas appellant No.3 who was stated to have gone to village Sanpad which is nearer to village Tajpur was not informed about the untimely death of his wife and he could come to know about the same on the next day when he returned from village Sanpad to Tajpur in the evening at about 5 or 6 p.m. and that too at the bus-stand.

In the result, the appeal is partly allowed.As far as appellant No.1 Shakrabhai Ranchhodbhai Ravar is concerned , the prosecution has failed to establish the charge under Section 302 of the Indian Penal Code against him. He is, therefore, acquitted for the offence punishable under Section 302 of the Indian Penal Code and is ordered to be released forthwith , if not required in connection with any other offence.

The appeal, in so far as appellants Nos. 2 and 3 are concerned, is dismissed.

At the request of the learned Advocate for the appellants, writ to be sent to Baroda Central Prison where appellant No.1 is undergoing sentence.

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